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Attorneys for Defendant
CALIFORNIA PIZZA KITCHEN, INC.
and NESTLE USA, INC.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KATIE SIMPSON, on behalf of herself
and all others similarly situated,

Plaintiffs,

v.

CALIFORNIA PIZZA KITCHEN, INC.
and NESTLE USA, INC.,

Defendants.

Case No. 13CV0164 JLS JMA

Action Filed: January 21, 2013

**DEFENDANTS' NOTICE OF
MOTION FOR RULE 11
SANCTIONS; PROOF OF
SERVICE; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF DALE J.
GIALI**

[Fed. R. Civ. P. 11]

Hearing Date: July 11, 2013
Hearing Time: 1:30 p.m.
Location: Courtroom 4A

Trial Date: None set

1 **PLEASE TAKE NOTICE THAT** on July 11, 2013, at 1:30 p.m., or as
2 soon thereafter as this may be heard, in Courtroom 4A of this Court, located at 221
3 West Broadway, San Diego, California, before the Honorable Janis L. Sammartino,
4 defendants California Pizza Kitchen, Inc. and Nestlé USA, Inc. will and hereby do
5 move the Court for an order issuing sanctions against attorney Gregory Weston
6 and The Weston Firm as follows: (i) a monetary sanction in the amount of
7 \$150,000 for presenting to the Court for filing the first amended complaint in this
8 action (Dkt. #13), and (ii) striking the first amended complaint with prejudice.

9 **PLEASE TAKE FURTHER NOTICE THAT** defendants also seek an award of
10 fees in the amount of \$50,000 in the event they are the prevailing parties on this
11 motion, as reimbursement for the reasonable fees incurred on this motion.

12 Filing of this motion is in full compliance with Fed. R. Civ. P. 11(c)(2).
13 This motion is filed only after the supporting papers were served on The Weston
14 Firm and Gregory Weston and the 21-day safe harbor period of Fed. R. Civ. P.
15 11(c)(2) lapsed. As the attached proof of service attests, the memorandum of
16 points and authorities and the declaration of Dale Giali and accompanying exhibits
17 supporting this motion were hand-served on The Weston Firm and Gregory
18 Weston on April 11, 2013. Moreover, as the e-mail attached directly after the
19 proof of service attests, separate courtesy electronic delivery to Mr. Weston was
20 made on the same day. This motion also is served 55 days after defendants'
21 motion to dismiss the initial complaint was served and filed, 53 days after
22 defendants' initial Rule 11 motion was served, and 24 days after defendants'
23 motion to dismiss the amended complaint was served and filed.

24 This motion is made pursuant to and in compliance with Fed. R. Civ. P. 11,
25 and is based on the grounds that Gregory Weston and The Weston Firm filed an
26 objectively baseless first amended complaint for an improper purpose.
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1 This motion is based on this notice of motion, the accompanying
2 memorandum of points and authorities, the accompanying declaration of Dale J.
3 Giali, the separately filed renewed motion to dismiss (Dkt. #20-1), all pleadings
4 and documents on file in this case, and on such other written and oral argument as
5 may be presented to the Court.

6 DATED: May 6, 2013

MAYER BROWN LLP
Carmine R. Zarlenga
Dale J. Giali
Andrew Z. Edelstein

9
10 By: /s/ Dale J. Giali
 Dale J. Giali
11 Attorneys for Defendants CALIFORNIA
12 PIZZA KITCHEN, INC. and NESTLE
13 USA, INC.
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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2013, I caused the foregoing
DEFENDANTS' MOTION FOR RULE 11 SANCTIONS AND
DECLARATION OF DALE J. GIALI and accompanying documents, to be re-
served on plaintiff's counsel. As the attached separate proof of service attests, the
memorandum of points and authorities and declaration of Dale Giali, with exhibits,
were initially hand-served on Gregory Weston and The Weston Firm on April 11,
2013.

DATED: May 6, 2013

MAYER BROWN LLP

By: /s/ Dale J. Giali
Dale J. Giali
Attorney for Defendant
NESTLE USA, INC.

CORRECTED PROOF OF SERVICE

I, Michael Pfahler, declare:

I am employed in San Diego County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is: 110 W. C Street, Suite 915, San Diego, CA 92101. On April 11, 2013, I served a copy of the within document(s):

**1. DEFENDANTS' MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION FOR RULE 11 SANCTIONS;**

**2. DECLARATION OF DALE J. GIALI IN SUPPORT OF
DEFENDANTS' MOTION FOR SANCTIONS UNDER FED.R.CIV.P. 11
(WITH EXHIBITS A-M).**

by personally delivering the document(s) listed above to the person(s)
at the address(es) set forth below.

Gregory S. Weston
Jack Fitzgerald
Melanie Persinger
THE WESTON FIRM
1405 Moreno Blvd., Suite 201
San Diego, CA 92110

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on April 11, 2013, at San Diego, CA ⁽⁵⁷⁾ ~~Los Angeles~~, California.

Michael Pfahler
[Print name]



Giali, Dale J.

From: Giali, Dale J.
Sent: Thursday, April 11, 2013 5:17 PM
To: Gregory S. Weston
Cc: jack@westonfirm.com; Zarlenga, Carmine R.; Edelstein, Andrew
Subject: Simpson v. Nestlé USA -- courtesy service of 2d Rule 11 motion
Attachments: Simpson Rule 11 -- Ex. J Initial Rule 11 P&A.pdf; Simpson Rule 11 -- Ex. K Redline.pdf; Simpson Rule 11 -- Ex. L Updated - PoisonPizza.com - 4-3-13.pdf; Simpson Rule 11 -- Ex. M (Stouffers Sausage).pdf; Simpson Rule 11 -- Exs. A-I Rule 11.pdf; Simpson Rule 11 -- Giali Decl.pdf; Simpson Rule 11 -- P&As.pdf

Mr. Weston –

I understand your office was hand served today with defendants' 2d Rule 11 motion. Enclosed are courtesy e-copies of the papers.

Dale J. Giali | M A Y E R • B R O W N

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